IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 80 OF 2003

The State of Maharashtra and Ors. .... Applicants

Versus

Shankar Narayan Desai and Ors. ...Respondents

Mr. A.R. Patil, Assistant Government Pleader, for the Applicants.
Mr. A.P. Vanorsee for the Respondents.

CORAM: **DR. D.Y. CHANDRACHUD, J.**
DATE: **DECEMBER 21, 2005**.

P.C.

Rule. Counsel appearing on behalf of the Respondents waives service. By consent, taken up for hearing and final disposal.

2. The original Plaintiff, Shankar Narayan Desai, instituted Regular Civil Suit No. 419 of 1974 in the Court of the Civil Judge, Senior Division, Ahmednagar, challenging an order of reversion and seeking damages in the amount of Rs.5,000/-. The suit was dismissed by the Civil Judge,Senior Division, Ahmednagar, and that order was confirmed in Regular Civil Appeal by the District Court on 21st July, 1979. The Second Appeal came to be allowed by this Court on 22nd April, 1986, on the ground that the original Plaintiff came to be reverted on the ground of adverse confidential reports and that the order of reversion amounted to casting a stigma without

compliance with the principles of natural justice. This Court accordingly decreed the suit to the extent of allowing the claim of the original Plaintiff in the amount of Rs.5,000/- together with interest at the rate of 12 per cent from 3rd April, 1974 till realisation.

3. A Darkhast proceeding was instituted by the legal heirs of the decree holder in 1999. In response thereto, the State Government, as a judgment debtor, stated in its reply dated 4th February, 2000 that the decree had been fully satisfied by the State by the payment of an amount of Rs.12,647/- to the decree holder by demand draft dated 1-1-1987 which had been received. Moreover, the decree holder was stated to have issued a receipt for the aforesaid amount. The reply of the Government contain the following averment.

> " In fact, the amount of Rs.12647/- was sanctioned by Agriculture Department, Maharashtra state, Pune vide letter No. PRN/1175/27864/AG-6 dated 4/12/1986 considering the decreed amount along with interest at 12% thereon for the period 3/1974 to Dec. 1986 and thereafter the J.D. Sent letter vide No. Marathi/PRN/1175/57877/Agri-8 dated 12/3/87 to the original decree holder Shankar Narayan Desai who was residing at Vadgaon Maval and Demand Draft bearing No. 1220884 dated 1/1/87 was issued and sent to the original decree holder and accordingly the said original decree holder received the said amount of Rs.12647/- from Sub Divisional Soil Conservation Officer,

Akkalkot,Dist.Solapur on 18/1/1987 he passed a receipt accordingly."

It is also submitted that the execution proceedings which were instituted over twelve years after the judgment of this Court were barred by limitation.

4. The Executing Court dismissed the objections of the State by its order dated 7th April, 2001. The Executing Court held that since the suit of the Plaintiff was decreed, the judgment debtors were liable to pay the salary and allowances payable to an Agricultural Officer as prayed in the suit.

5. On behalf of the Applicants it has been submitted by the learned Assistant Government Pleader that the Executing Court has not considered any of the objections raised on behalf of the Applicants. On the contrary, it is submitted that the decree was fully satisfied upon the payment of an amount of Rs.12,647/- to the decree holder for which a stamped receipt had been issued. A copy of the stamped receipt has been produced before this Court from the official files of the Government maintained in the ordinary course of its business.

6. As a result of the judgment of this Court in the Second Appeal, the suit instituted by the Original Plaintiff was decreed in the amount of Rs.5,000/- together with interest at the rate of 12 per cent to be paid with

effect from 3-4-1974. The amount of Rs.12,647/- was sanctioned by the Agriculture Department of the State Government by letter dated 4th December, 1986 in view of the amount for which the suit was decreed together with interest for the period 3rd April, 1974 till December, 1986. A letter was sent to the decree holder on 12th March, 1987 together with the demand draft bearing No. 1220884 dated 1st January, 1987. A stamped receipt of Rs.12,647/- was issued by the decree holder upon receipt of the amount from the Sub-Divisional Soil Conservation Officer, Akkalkot, Dist.Solapur. A copy of the receipt has been produced before the Court. In these circumstances, the order of the Executing Court is completely erroneous and is in excess of jurisdiction. The interference of this Court in the exercise of its revision jurisdiction is warranted.

7. Accordingly, the Civil Revision Application is allowed. The order dated 7th April, 2001 is quashed and set aside. The decree shall accordingly stand marked as fully satisfied in view of the payment of Rs.12,647/- effected by the Applicants to the decree holder. Rule is made absolute accordingly. There shall be no order as to costs.